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ALEXANDER L. STEVAS
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NO. 84-941

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

THE STATE OF OKLAHOMA,
Petitioner,

vs.

MONTY LEE EDDINGS,
Respondent.

RESPONSE TO PETITION FOR

WRIT OF CERTIORARI TO THE

OKLAHOMA COURT OF CRIMINAL APPEALS

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TABLE OF AUTHORITIES

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The respondent suggests that the Petition for Writ of Certiorari pursued by the State of Oklahoma should be denied.

STATEMENT OF THE CASE

The statement of the case set forth in the Petition of the State of Oklahoma is accepted by the Respondent as a correct recitation of the history of this case.

PRELIMINARY STATEMENT

It is difficult to respond to the State's Petition for Writ of Certiorari within the parameters of the Rules of this Court for the reason that the State of Oklahoma has presented this Court with a brief rather than a Petition for Writ of Certiorari. It would behoove the Attorney General of the State of Oklahoma to peruse Rule 17 of the Rules of this Court.

The proper function of the Petition for a Writ of Certiorari is to offer "special and important" reasons why a pronouncement by this Court is necessary. Enumerated grounds include:

> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or a federal court of appeals.
>
> (c) When a state court of a federal court of appeals has decided an important question of federal law which has not

> been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court. [Rule 17, Rules of the Supreme Court of the United States.]

The State has failed to offer these reasons. Instead, the State has chosen to brief the issues on the merits.

This failure to present with clarity the reasons advanced for granting the Writ is sufficient ground to deny the petition as set forth in Rule 21(k).

I.
THE COURT SHOULD DENY CERTIORARI BECAUSE THE PROPOSITION IS NOT A MATTER ON WHICH A PRONOUNCEMENT BY THIS COURT IS NEEDED.

The decision of the Court of Criminal Appeals of the State of Oklahoma is rooted upon that Court's interpretation of an Oklahoma Statute, 21 Okla.Stat. §701.13. The statute grants to the Oklahoma Court

of Criminal Appeals in reviewing death sentences the power to:

> 1. Affirm the sentenced of death; or
>
> 2. Set the sentence aside and remand the case for modification of the sentence to imprisonment for life.

The statute, by its very terms, denies the reviewing court jurisdiction to remand a capital case for a new sentencing hearing. The Oklahoma Court so held in Johnson v. State, 665 P.2d 815, 825 (Okla.Cr. 1982):

> We are now convinced that a plain reading of 21 O.S.1981, §701.13, does not authorize this Court to remand a death case, tried before a jury, solely for a resentencing before a different jury, even when error occurs only in the sentencing stage...
>
> . . . When prejudicial error occurs in the sentencing stage of the trial only, this Court has consistently modified the death sentence to life imprisonment and otherwise affirmed.

In deciding the case giving rise to this petition, the Court of Criminal Appeals noted:

> When this Court handed down its decision in Johnson— February 8, 1983—the Oklahoma Legislature was still in session. The Oklahoma Legislature could have then, or in its most recent session, enacted a procedure for resentencing had it felt that this Court had misinterpreted the legislative intent. The Oklahoma Legislature did not do this. Thus, we must conclude that the Johnson interpretation was correct, and that we have carried out the clear legislative intent. Our decision upon hearing Johnson is therefore reaffirmed. Eddings v. Oklahoma, ____ P.2d ____ (Okla.Cr. 1984).

It is, thus, readily apparent that the decision of the Oklahoma Court of Criminal Appeals will effect only a small number of cases emanating from Oklahoma — those criminal cases where a sentence of death, imposed upon a plea of guilty or nonjury trial, is reversed upon appellate review. This is not a issue of na-

tional importance upon which a pronouncement of this Court is desirable. Nor is the decision of the Oklahoma Court in conflict with any decision by any United States Court of Appeals or the supreme court of another state. Nor can it be. It is an issue of strictly local concern which should be permitted to ventilate in the courts of Oklahoma.

It should also be noted that the Oklahoma statute has in the last few days been amended to authorize the Court of Criminal Appeals to remand capital cases for a new sentencing hearings after reversible error is found on appellate review. Thus, the question which the State presents here will never again arise.

II.

THE DECISION OF THE OKLAHOMA COURT OF CRIMINAL APPEALS IS GROUNDED UPON AN INDEPENDENT STATE GROUND

The language quoted previously from the opinion of the Oklahoma Court of Criminal Appeals in Johnson v. State reveals that the decision in that case was predicated upon the proper interpretation of the Oklahoma statute. The Court found that the language of the statute specifically excluded the power to remand for a new sentencing hearing. That rationale was reaffirmed in Eddings; but, in addition, the Court based its decision upon the tacit approval of the state legislature. These are independent state grounds for its decision.

CONCLUSION

For the reasons set forth herein, the petitioner asks that the requested writ of certiorari be denied.

Respectfully Submitted,

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